

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 793 of 1991
with
First Appeal No.794 of 1991
to
First Appeal No.803 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

STATE OF GUJARAT

Versus

HEIR OF RABARI BODHA KUMBHA

Appearance:

Mr.U.A. Trivedi, Assistant Government Pleader for
the appellants
MR RD DAVE for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL and MR.JUSTICE M.H.KADRI
Date of decision: 26/11/98

COMMON ORAL JUDGEMENT (Per: Kadri, J.)

1. The appellant-State of Gujarat has filed these First Appeals under Section 54 of the Land Acquisition Act, 1894, ('Act' for short) read with Section 96 of the Code of Civil Procedure, challenging the judgment and award dated March 26, 1990, rendered by the learned Assistant Judge, at Porbandar, in Land Acquisition Cases

Nos. 1/83 to 10/83 and 1/84.

2. As the lands of the respondents were acquired for the public purpose, namely, Ishwaria Small Irrigation Scheme, by notification dated March 5, 1981, and the acquired lands are situated in the same village, namely, Druvala, Taluka Kotiyana, District Junagadh, and as common questions of law and facts are involved in all the aboveresferred Land Acquisition Cases and the First Appeals, we propose to dispose of these appeals by this common judgment.

3. The Executive Engineer, Panchayat Irrigation Department, Junagadh, had proposed to acquire the lands of village Druvala for the purpose of Ishwaria Small Irrigation Scheme in the year 1980. Therefore, proceedings for acquisition of lands were started and possession of the lands belonging to the respondents was taken. After following the procedure prescribed under the Act, notification under Section 4 of the Act was published in the Government Gazette on March 5, 1981. After inviting objection from the persons interested, and submitting a report under Section 5 of the Act, declaration under Section 6 of the Act was made on December 24, 1981. Notices came to be issued to the persons interested, i.e., respondents and the Land Acquisition Officer after considering the relevant material produced before him, made award under Section 11 of the Act on November 4, 1982. The Land Acquisition Officer determined the market value of the land at Rs.5000/- per Hectare for the non-irrigated lands and Rs.7500/- per Hectare for the irrigated lands. The Land Acquisition Officer had also awarded price of super-structure, embankment, pipeline, machine room, residential house and trees. The respondents, feeling dissatisfied with the award of the Land Acquisition Officer, filed applications under Section 18 of the Act. The said applications were forwarded to the District Court, Junagadh, which came to be registered as Land Reference Cases Nos. 1/81 to 10/83 and 1/84. All the said Land Reference Cases came to be transferred to the Court of learned Assistant Judge, at Porbandar. Before the Reference Court, the respondents examined the following witnesses:

- (i) Haja Zodha (Exh.29)
- (ii) Aabha Kara (Exh.42)
- (iii) Jivabhai Hajibhai (Exh.44)
- (iv) Bhanjibhai Khimjibhai (Exh.47)

The appellants examined Talati-cum-Mantri of village Dhruvala, Nagendrakumar Jayantilal (Exh.51), and produced documentary evidence consisting of extracts from the

revenue records and certified copies of Index Register. The respondents also led documentary evidence in form of sale instances at Exh.45 and 48.

4. The Reference Court on appreciation of oral as well as documentary evidence and after hearing the learned advocates of the parties, determined the market value of the acquired land at Rs.3200 per bigha treating the acquired land as irrigated land. The Reference Court awarded compensation for the wells situated on the acquired lands at rate of Rs.12,000/- per well. The Reference Court also awarded compensation for Thala Kundis Oriyas, Machine room, cement pipeline, embankment, and also for fruit bearing trees by adopting yield method. The Reference Court awarded interest on the amount of additional compensation under Section 23(1-A) of the Act and solatium, which is challenged by the appellants by filing these First Appeals.

5. The learned Assistant Government Pleader, Mr.U.A.Trivedi, contended that the determination of the market value of the acquired lands treating them as irrigated lands at Rs.3200 per Acre is on a higher side. It is submitted that the Reference Court has erred in not relying upon the documentary evidence produced by the acquiring body. In our view, the submission of the learned counsel for the Government does not deserve any merits and, therefore, is rejected. The claimants had placed reliance on sale deed, Exh.45, dated June 5, 1982, which was in respect of sale of land bearing survey No.492 of village Iswaria, admeasuring 16.18 bighas. The total consideration of sale deed was Rs.50,000/-. The price of sale for the land bearing Survey No.492 nearly comes to Rs.3100 per Bigha. To prove the sale deed, the claimants had examined Jivabhai Hajibhai at Exh.44. The witness at Exh.44 categorically deposed that the land of village Dhruvala was superior in fertility as compared to the lands of village Iswaria and the price of the land of village Dhruvala was also higher as compared to the lands of village Iswaria. In our view, as village Iswaria is adjoining the acquired lands of village Dhruvala, the said sale instance is comparable for determination of the market value of the acquired land. Moreover, the date of sale is in proximity of the publication of the notification under Section 4 of the Act.

6. The claimants had also relied upon sale deed Exh.48, dated April 10, 1981, of lands of village Mohabatpara, bearing Survey No.20/1, admeasuring 30 Acre and 22 Gunthas, equivalent to 9 Bighas. The total consideration of the above sale deed was Rs.30,000/which

comes to Rs.3333.00 per Bigha. To prove the sale deed, the claimants had examined the purchaser of the land bearing Survey No.20/1, Bhanjibhai Khimjibhai at Exh.47. The said witness stated that the village Mohabatpara was at the distance of 3 to 4 k.ms. from village Dhruvala. He deposed that there was a river near village Dhruvala and the claimants used to get the facility of river water for irrigation. In our view, the sale deed Exh.48 produced by the witness, Bhanjibhai Khimjibhai, is the most relevant piece of evidence for determination of the market value of the acquired lands. Section 4 notification in the present case was published on March 5, 1981. Both the sale deeds relied upon by the claimants were proximate in time. By the sale deeds Exh.45 and 48, the land transactions had taken place between the willing seller and the willing purchaser and, therefore, the same were genuine sale deeds and did reflect the market price at the relevant date. Moreover, the acquired lands were having more fertility than the lands of Iswaria and Mohabatpara which were the subject matter of sale deeds Exh.45 and 48 respectively. Therefore, in our view, the Reference Court has rightly relied upon the above two sale deeds in determining the market value of the acquired lands.

7. Before the Reference Court, the appellant had produced copy of sale index, but had not examined any witness to prove the said sale index. It is settled legal principle that, unless vendor or vendee is examined to prove the sale instances, no reliance can be placed on the certified copy of the index produced under Section 51A of the Act. Therefore, in our view, the Reference Court was justified in ignoring the documentary evidence produced by the appellant in the reference proceedings. Taking into consideration the totality of circumstances, as stated above, in our view, the Reference Court while determining the market value of the acquired land at Rs.3200/- per Bigha, had committed no error.

8. The learned counsel for the appellant has submitted that the Reference Court has erred in awarding separate compensation for the wells situated on the acquired land. It is submitted that, as per the decisions rendered by the Apex Court, in the cases of

- (i) O.Janardhan Reddy and others vs. Special Deputy Collector, L.A. Unit-IV, LMD, Karimngar, reported in 1994 (6) SCC 456
- (ii) State of Bihar vs. Madheshwar Prasad, reported in 1996 (6) SCC 197
- (iii) State of Bihar vs. Ratan Lal Sahu and others,

reported in 1996 (10) SCC 635,
no separate compensation for the well can be awarded to the claimants and, at the most, the land, which is getting the facility of irrigation through the well, can be treated as 'irrigated land' and the compensation can be awarded for the acquired land treating it as the irrigated land. In view of the pronouncement of the Apex Court, with regard to compensation to be awarded in the case of the well situated in the acquired land, in our view, when the acquired lands are treated as irrigated land, no separate compensation with regard to the well situated on the acquired land can be awarded to the respondent. Therefore, the award of the Reference Court with regard to compensation for the wells situated on the acquired land deserves to be set aside.

9. The learned counsel for the appellant next submitted that the Reference Court ought not to have awarded compensation for fruit bearing trees which were existing on the acquired land. It is submitted that when the market value of the land has been determined, fruit bearing trees cannot be separately valued as it would amount to duplication of compensation to be awarded with respect to the said land. In support of this submission, the learned counsel for the appellant relied upon the judgment of the Apex Court in the case of State of Haryana v. Gurcharan Singh, reported in AIR 1996 Supreme Court 106. In the above decision, the Apex Court has ruled that separate compensation for land and fruit bearing trees cannot be awarded when the market value of the land is already determined. It is further ruled that compensation is for o value of the acquired land and as per the definition of 'land' under Section 3A of the Act, 'land' includes benefits arising from the land.

10. The learned counsel for the respondent, however, vehemently submitted that there were fruit bearing trees situated on the acquired land for which separate compensation should be awarded as the respondent has led oral evidence to show that they were getting income from the fruit bearing trees. In our opinion, the submission of the learned counsel for the respondent deserves to be rejected. The respondents in their oral evidence had not led any evidence with regard to income derived from the fruit bearing trees. Furthermore, the Court cannot resort to both the methods, i.e, evaluating the land by relying upon the sale instance and evaluating separately the income of the fruit bearing trees and thereby fixing the compensation of the fruit bearing trees. This method is deprecated by the Apex Court in the case of Gurcharan Singh (supra). Therefore, in our opinion, the award of

the Reference Court granting compensation in respect of fruit bearing trees deserves to be set aside.

11. The learned counsel for the appellant next contended that the Reference Court ought not to have awarded compensation for structures/building which existed on the acquired land. It is submitted that land and building cannot be separately valued and both are to be evaluated as one unit. In support of this submission, the learned counsel for the appellant placed reliance on the judgment of the Apex Court in the case of Ratan Kumar Tandon and others vs. State of U.P, reported in (1997) 2 Supreme Court Cases 161. The question considered by the Apex Court was that when the lands are acquired under the Act and there exists a building, whether the land and building can be separately evaluated. It is ruled that, "when land and building are acquired by a notification, the claimant is not entitled to separate valuation of the building and the land. They are entitled to compensation on either of the two methods but not both. In this case, since the land was separately valued, the building cannot be again separately valued and compensation awarded except the value of debris. In our opinion, in view of the principles laid down by the Apex Court in the case of Ratan Kumar Tandon (supra), the Reference Court erred in law in awarding separate compensation for the structure which existed on the acquired land. Similarly, the award of the Reference Court with regard to compensation awarded with regard to pipeline, which was used for irrigating the land, also deserves to be set aside. When the land is treated as irrigated land, no separate compensation ought to have been awarded for kundies, pipelines, etc.

12. The learned counsel for the appellant submitted that the Reference Court has erred in awarding interest under Section 28 on the amount of solatium as well as on the additional amount under Section 23(1-A) of the Act. In support of this submission, the learned counsel for the appellant relied upon the decision of the Supreme Court in the case of State of Maharashtra vs. Maharau Srawan Hatkar, reported in JT 1995 (2) S.C. 583, wherein, the Apex Court in paragraph 7 held as under:

"7 It would thus be seen that additional amounts envisaged under sub-ss. (1-A) and (2) of s.23 are not part of the component of the compensation awarded under sub.s(1) of s.23 of the Act. They are only in addition to the market value of the land. The payment of interest also is only consequential to the enhancement of the compensation. In a case where the Court has not enhanced

the compensation on reference, the Court is devoid of power to award any interest under s.28 or the spreading of payment of interest for one year from the date of taking possession at 9% and 15% thereafter till date of payment into the court as envisaged under the proviso."

In view of the settled legal position as propounded by the Apex Court, the respondents-claimants are not entitled to interest under Section 28 of the Act on the amount of solatium and additional amount at 12% under Section 23(1-A) of the Act. Therefore, the award of the Reference Court on this count also deserves to be modified.

13 As a result of foregoing reasons, we hold that the market value fixed by the Reference Court with regard to the acquired lands at Rs.3200/- per Bigha is quite just and proper and cannot be said to be excessive. The award of the Reference Court with regard to compensation awarded for wells, fruit bearing trees, structures, pipelines, kundies, vorias, embankment is hereby set aside. The award of the Reference Court with regard to awarding interest on the amount of solatium and additional amount under Section 23(1-A) of the Act is set aside and it is held that the claimants are not entitled to interest on the additional amount at 12% under Section 23(1-A) and solatium.

14. In the result, the appeals are partly allowed with no order as to costs. The office is directed to draw decree in terms of the findings and directions indicated in this judgment.

(swamy)